

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36154

STATE OF IDAHO,	)	2010 Unpublished Opinion No. 407
	)	
Plaintiff-Respondent,	)	Filed: March 30, 2010
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
CHRISTOPHER THOMAS FOSS,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Minidoka County. Hon. R. Barry Wood, District Judge.

Order revoking probation and requiring execution of unified fifteen-year sentence, with twelve-year determinate term, for aggravated battery, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Stephen D. Thompson, Ketchum, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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Before LANSING, Chief Judge; GUTIERREZ, Judge;  
and GRATTON, Judge

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PER CURIAM

Christopher Thomas Foss pled guilty to aggravated battery. I.C. §§ 18-903(b), 18-907(b). The district court imposed a unified fifteen-year sentence, with a twelve-year determinate term, but after a period of retained jurisdiction, suspended the sentence and placed Foss on probation. Two months later, Foss violated the terms of his probation, and the district court retained jurisdiction. Following completion of his rider, Foss was again placed on probation. Subsequently, Foss admitted to violating several terms of the probation, and the district court consequently revoked probation and ordered execution of the original sentence. Foss filed an I.C.R. 35 motion for reduction of his sentence, which the district court denied. Foss

appeals, contending that the district court abused its discretion in revoking probation, that his sentence is excessive, and that the district court erred in denying his Rule 35 motion.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 326, 834 P.2d at 328.

Sentencing is also a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. See *State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

When we review a sentence that is ordered into execution following a period of probation, we will examine the entire record encompassing events before and after the original judgment. *State v. Hanington*, 148 Idaho 26, 29, 218 P.3d 5, 8 (Ct. App. 2009). We base our review upon the facts existing when the sentence was imposed as well as events occurring between the original sentencing and the revocation of probation. *Id.*

Foss asserts that the district court erred in denying his Rule 35 motion. Foss filed his Rule 35 motion more than fourteen days after the entry of the order revoking probation. The fourteen-day limit is a jurisdictional limit on the authority of the district court to consider a motion for reduction of sentence. *State v. Sutton*, 113 Idaho 832, 833, 748 P.2d 416, 417 (Ct.

App. 1987. Therefore, because Foss's motion was untimely, the district court lacked jurisdiction to consider it.

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion either in revoking probation or in ordering execution of Foss's original sentence without modification. Further, the district court was without jurisdiction to consider Foss's Rule 35 motion. Therefore, the order revoking probation and directing execution of Foss's previously suspended sentence and the district court's order denying Foss's Rule 35 motion are affirmed.